

MINUTES
REGULAR MEETING OF BOARD OF LAND COMMISSIONERS
January 18, 2005, at 9:00 a.m.
Scott Hart Building Auditorium
301 N. Roberts, Helena MT

PRESENT: Governor Brian Schweitzer, State Auditor John Morrison, and Attorney General Mike McGrath

ABSENT: Secretary of State Brad Johnson

VIA PHONE: Superintendent of Public Instruction Linda McCulloch

Mr. McGrath moved for approval of the minutes from the December 20, 2004, meeting of the Board of Land Commissioners. Seconded by Mr. Morrison. Motion carried unanimously.

BUSINESS CONSIDERED:

Director Mary Sexton said we have three transfers to consider today. Valerie Wilson, Department of Corrections, is here to address the first three agenda items.

- 105-1 TRANSFER TO CITY OF BOULDER
 (Dept. Corrections under §77-2-351, MCA)
- 105-2 TRANSFER OF BOULDER COUNTY HIGH SCHOOL PARCEL
 (Dept. Corrections under §77-2-351, MCA)
- 105-3 TRANSFER OF PARCEL IN BOULDER, MT
 (Dept. Corrections under §77-2-351, MCA)

Valerie Wilson, DoC, said we're here to recommend the Board approve a transfer of property owned by the Department of Corrections to three public entities, the Town of Boulder, Jefferson County, and to the Jefferson County High School District. We are asking that this transfer be approved under §77-2-351, MCA, the section of statute which allows a public agency to transfer other property to another public agency for free as long as they promise to covenant the use for a public purpose. The properties we are talking about are located in Boulder. Ms. Wilson used a map to show where the properties are located. The two parcels are adjacent to the high school district property. The high school practice field and a large part of the football field are on Department of Corrections property and it has been used by the high school district for the last twenty years. It is one of the few lots that Department of Corrections has north of the Boulder River. This is the first recommendation for transfer to the high school district for continued use as the high school football and practice fields.

The next transfer to discuss is the lagoons (#105-3). There are three cells of the lagoon system that are on the Department of Corrections property. With the Boulder River School, we've got over 1,000 acres down there and there are just a few parcels we own that are north of the Boulder River. This parcel was constructed by the Boulder River School and the Town of Boulder as sewage lagoons easily 30 years ago. When the downsizing of the Boulder River School occurred, they moved their whole facility north of the Boulder River and hooked up to city sewer and water. This parcel is owned and operated solely by the Town of Boulder, who is currently leasing it. They are requesting we transfer that property to them and provide them

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with enough room to build another cell. Our recommendation to the Board is to transfer the entire piece to them, all the property the Department of Corrections owns north of the Boulder River. That way there wouldn't be any parcels that were cut off and no unusable pieces left.

The final parcel we'd like to bring to the Board is a parcel south of the Boulder River, close to the Riverside Youth Correctional Facility. The adjoining land is owned and used by the Department of Transportation for storage and shop area. The small piece is owned by Jefferson County and houses their county shop. They are asking we convey title to them for this property. It is in a low lying area next to the river, most of the property is in the floodplain. Prior to that it was used by the Boulder River School as a fishing pond. The county would like to use it to store road mix, we currently lease it to them for that purpose. The proposed transferees are actually leasing the property from Department of Corrections now so there would be no change in use, and we're convinced it is in the best interest of the public to recommend these transfers.

Ms. Sexton reminded the Board the request is for preliminary approval. There are steps to finish before final approval of the transfer. This will come back to the Board for that final approval.

Mr. McGrath asked if the city had any plans to subdivide any of the lagoon parcel after transfer? There is a lot of extra property involved, are there any long range plans?

Ms. Wilson replied not that she is aware of. Because there are no contiguous portions of the city that are in the lagoon area, this will have to go through minor subdivisions to be approved.

Harold Stepper, Jefferson County Planner, said we do have to go through some minor subdivision on this piece of property since it is not contiguous to the City of Boulder. All we have is an easement through it for a county road. Therefore, we would have to do a minor subdivision. It is the intent of the city to put in an additional cell or two, or possibly if we have to, to go further in and put a treatment facility in. to our knowledge, they have no plans for building or subdividing it into lots. That will be saved strictly for the sewage system.

Ms. Wilson said if at any time these parcels are not used for a public purpose, they revert back to the Department of Corrections.

Governor Schweitzer asked so there is no limitation on their use, the city and county can choose what they would like to do with these parcels beyond what we've discussed today?

Mr. Stepper replied they can but it would have to be used for community purposes. The city wants this area strictly to continue the use of the lagoon system, and expand it if necessary. Currently the balance of land is leased by a local rancher, and in order to get to this you have to go on a county road that comes through a gate. This is fenced off for security purposes.

Ms. Wilson said if the Board would want to recommend or place some restrictions on this, we would be receptive to that.

Mr. Morrison said the terms already state that if it were to be used for something other than for a public purpose, it reverts. That's the most important restriction.

Bob Klein, Jefferson High School Superintendent, said he was here to encourage the Board to approve the transfer.

Chuck Notbohm, Jefferson County Commissioner, said the stockpile is something that would be advantageous to the road department and would fit in and we'd clean up the property there. What I would like to mention to you is the fairgrounds. This is something we've been working on for 15 years and we'd like to develop that, we do have preliminary approval but it is still pending. It would be a really good economic boost for Jefferson County if we could get that taken care of. In the past we've been reluctant to put a lot of money into developing it without ownership.

Ms. Wilson said the Department of Corrections is moving forward to get final approval on that.

Motion was made by Mr. Morrison to approve the three transfer requests. Seconded by Mr. McGrath. Motion carried unanimously.

Mr. McGrath said for the record, as Director Sexton said, this is for preliminary approval so the details will get discussed later. It is important to make a point that over the years there has been some controversy about this statute and the ability of the state to transfer trust lands to other public entities. Personally I am very comfortable that we don't have a constitutional issue or a problem as long as the local entities involved use the lands for public purposes. What has happened is that oftentimes the state just doesn't use the land at all, whereas the local government can develop the property. If they have an ownership interest, it gives them an opportunity to sell bonds or otherwise acquire financing to develop the property. It is clearly a good provision and it is authorized under the constitution.

105-4 GOAT SQUEEZER III TIMBER SALE

David Groeschl, DNRC Forest Management Bureau, said before you today is the Goat Squeezer III Timber Sale. This is the third of three timber sales, the third and final under the EIS. The project area was approximately 10,000 acres, this sale covers 417 acres across 17 units. The volume is 3 MMbf and the purpose of the sale has two main objectives: the salvage operation to harvest insect and disease-killed trees and to improve forest health; the second one is to reduce the stocking level, the density on those stands where disease and insects are not an issue currently, but to reduce the stocking to give the healthy trees room to grow and to help us achieve our future desired conditions for that forest. There were two previous sales, Goat Squeezer I and Goat Squeezer II. Goat Squeezer I is about 95% completed, Goat Squeezer II is about 60% completed. There was a lawsuit filed against Goat Squeezer I regarding impacts to white-tailed deer winter range or thermal cover. Judge Sherlock in a Summary Judgment dismissed the case basically stating that the State of Montana, DNRC, had adequately identified the impacts in the EIS, and that we recognized there would be impacts to the white-tailed deer winter range thermal cover. There has been an appeal filed before the Montana Supreme Court, but there is no injunction at this point on the sales and Goat Squeezer III is before the Board today.

Governor Schweitzer asked how big were Goat Squeezer I and II, how many acres and how many board-feet?

Mr. Groeschl replied Goat Squeezer I covered about 823 acres and it yielded a little over 2.8 MMbf. Even though it covered more acres, they used a different top diameter as far as merchantability specs.

Goat Squeezer II covered 678 acres and it also yielded about 2.2 MMbf. Goat Squeezer III is the smallest of the three sales, and it covers 417 acres expecting to yield 3 MMbf. Out of those 417 acres being treated, only about 76 acres of that – two units – are a regeneration type harvest the remaining acreage is a selection type harvest.

Governor Schweitzer asked if this was for larch or larch-ponderosa?

Mr. Groeschl said it is a combination. Out of this sale there is larch, Douglas fir, lodge pole, ponderosa and Engelmann spruce, depending on the unit being treated.

Mr. Morrison moved for adoption of the Goat Squeezer III Timber Sale. Seconded by Mr. McGrath. Motion carried unanimously.

105-5 METALLIFEROUS LEASE APPLICATION
(Stephen Deckard applicant)

Monte Mason, DNRC Minerals Management Bureau, said this is an application for gold and platinum placer and is located 3 miles SE of Bannack. It is a school trust K-12 section, but we do not own all of it. In that area with the history of the Bannack area there is a lot of historic mining that went on. We own about $\frac{3}{4}$ of this section, Grasshopper Creek runs through it. There are pre-statehood mining claims that run along Grasshopper Creek that take out about 170 acres. There are small miner activities off and on through that section, and this is an application for a portion of the land we own that is adjacent on both sides of the private mining claims. In this case, the applicant has an interest in doing some small scale trenching hoping he can find some ancient gravels that may have some placer gold in them. The recommendation to the Board is to authorize this application. The annual rental starts out at \$1.00 per acre, pursuant to administrative rule, for the first three years then it goes to \$2.50 per acre for two years, and then it will be \$3.00 for the remaining years. At the beginning in year one, it will be about \$471.00 for the 471 acres; we have a \$250 per year minimum advance royalty which Mr. Deckard pays whether he is producing anything or not, and he doesn't get it back, it is use or lose. And we are recommending an initial \$2500 performance bond which can be adjusted at any time. Most importantly on these mineral leases, we have a clause since we don't know, unlike timber or agricultural and grazing leases, you don't know exactly what is there or what they are going to propose to do until they get out there and see what is there, so there is a contingent right lease. We have a clause in here that very clearly states he has to show us what he is going to do first, we have to review it, and we can say no. We can deny all activities. They don't get the assurance that they can do anything out there, they are just the identified parties that can propose to do something. Mr. Mason asked for approval.

Mr. Morrison said any further activity in terms of actual development would come before the Land Board is that correct?

Mr. Mason replied that would be up to the Board. As you know our authority flows through you and typically depending upon the scale of these, it would not. If it was a small scale operation typically they would be approved by either myself or Director Sexton depending upon what they

are doing. As in coalbed methane, the Board has said it would like to review and approve those operations for that particular type of activity. So it is really up to the discretion of the Board.

Mr. Morrison said then the \$2500 bond would be subject to adjustment in the event there was any further development?

Mr. Mason said exactly. There is stipulation in the lease that says we can adjust that at any time. This is what we put in place before anyone proposes to do anything. More than likely, if it is beyond what I expect to be out there which is a small miner, at some point you trigger DEQ regulatory oversight and that triggers fairly low. So most of this would be regulated activity if it were to occur. We have a lot of mineral leases for metalliferous out there that we don't have any operations on so people pick them up from time to time, they are optimistic and typically nothing happens and they drop them. Then someone else is optimistic and they will pick them up for a while.

Mr. Morrison said because of the proximity to Bannack if there is much change of use I'd like to know about it.

Mr. Mason said sure. We can certainly stipulate on this one that any proposed operating plans would come back to the Board for review and approval.

Mr. McGrath said I am not sure it is necessary to go that far. We haven't done that in the past. My issue and concern is we want to make sure the bond is adequate so if the operation plan triggers a bond we want to make sure the reclamation plan is appropriate. We don't want to get in a situation where we don't have an appropriate bond. That is the big issue.

Motion was made by Mr. McGrath to approve the metalliferous lease application. Seconded by Mr. Morrison. Motion carried unanimously.

105-6 LAND EXCHANGE – LOLO NATIONAL FOREST & DNRC

Ms. Sexton said this is for preliminary approval of a land exchange between the Lolo National Forest and DNRC. This has been in the works for over 20 years, staffers from both the forest service and the state have been working on the exchange. It is for approximately 12,000 acres each in various parts of the Lolo National Forest, state lands, and Missoula-St. Regis and even into the Blackfoot area. Again, this is for preliminary action so we can continue on with this effort.

Jeanne Holmgren, DNRC Real Estate Management Bureau, said land exchanges are processed in accordance with a land exchange policy that was adopted by the Land Board in 1994. The policy contains both legal and administrative criteria to consider land exchanges. Land exchanges are typically accomplished in three phases. The first phase is a preliminary review phase in which we take a look at the lands proposed for disposal and acquisition and how they meet or exceed the criteria of the land exchange policy. We do an initial public scoping to see what some of the public issues are that may be associated with a particular land exchange. We do a preliminary estimate of land values to ensure that the properties will have greater or equal value associated with the exchange; and then we come before the Board for preliminary review. The second phase is where the major work is accomplished. We do final

title work, appraisals, MEPA, additional public scoping, public hearings, Phase I side assessments are accomplished, and we look at water rights. Then we bring it back to the Board for final approval, and then we exchange the documents. As Director Sexton said this exchange has been under consideration for many many years and is supported by both agencies, and it is appropriate to look at the consolidation of our lands for management purposes. We were successful in going to Congress and getting a \$200,000 appropriation directed to the processing of this land exchange to the forest service. That money and those appropriations will be used for some of the processing I talked about in Phase II of this land exchange.

- The first criteria is greater or equal value in acreage. Preliminary review suggests the values will be comparable and that this land exchange meets this criteria. There will also be some substantial benefits that probably will not be revealed in the appraisals such as consolidation of ownership and ease of management.
- The second criteria is state lands bordering on navigable and/or public use waterways. Some of the state trust lands in the proposed exchange borders navigable waters. However, state statute does provide for the disposition of navigable waters if it is in association with a federal agency. Public use of the property, because we are state and federal agencies use by the public will not change dramatically. The properties that we are acquiring from the forest service there is 160 acres that will not be legally accessible by the public but most of the other properties are adjacent to existing state lands and public access will be available. So for the lands proposed in the exchange, it sits well in both the trust land management and forest service management mission and goals. For trust lands we have a greater opportunity for managing the parcels, and they can be managed for timber management purposes. Again public access is still available and consolidation is a positive for the state. For the forest service, they will be acquiring properties in the Rock Creek area adjacent to the Welcome Creek Wilderness area, Rattlesnake area, Pattee Canyon, and the Clark Fork Scenic River Corridor.
- Thirdly, equal or greater income to the trust: because of our ability to manage and obtain forest service lands of greater value we anticipate that we can generate up to \$31,000 on an annual basis through timber management.
- Equal or greater acreage: currently we have proposed 12,125 acres of trust lands in exchange for 11,325 acres. We envision that the amount of land to be exchanged will be adjusted and equalized once we have the appraised values and we will identify how we can deal with the acreage.
- Consolidation of trust lands: through this process we are disposing of 36 sections that are scattered and locating in 15 acres where we currently have adjacent trust lands.
- The potential for long term appreciation: we believe the properties are similar in nature and therefore have a similar chance of appreciation in the long term.
- Access: this is a big issue. Legal access has not been perfected to the state lands. There may be forest service roads that are out there, but we have not perfected the legal right to access those lands. If we were to do so, we would have had to acquire 100 miles of access roads across forest service lands with 17 rights-of-way packages that would equal \$900,000 we would have to pay to acquire access to these lands if we did not conduct this land exchange.

That goes through the seven criteria on this land exchange. We believe for the reasons described that this land exchange meets and exceeds the Land Board policy and, therefore, we respectfully request approval to move forward to Phase II of the land exchange process. We

appreciate the cooperation with the forest service and the folks in DNRC and our field office that is largely responsible for processing this. Bob Storer, Tony Liane, and Liz Mullins will working on it at the land office, and at the bureau office there is Candace Durran, Jan Ward and Lisa Axline.

Governor Schweitzer said the idea is to move to Phase II and another period for public comment and assurances that we're addressing the seven issues we are required to address. It will come back to the Board at some future time for approval. He asked what is the timeline for this?

Ms. Holmgren said we anticipate within the next six to nine months. Remember in Phase II there is a lot of things to accomplish.

Tom Schultz, DNRC Trust Land Management Administrator, said maybe eight to twelve months.

Mr. McGrath said I intend to vote for this but I do have a couple of concerns. we don't have to do this now, but sometime as this proceeds, I'd like you to come over and talk to me about two things. One, I am concerned about the 160 acres we're not going to have any access for and I need to understand all of that. The second issue for me is looking at this map and there are obvious parcels that make sense for us to give to the forest service but there are a couple that I would question and one is east of Superior. And also anything that has river or stream access I'd be concerned about. Again, I don't want to go through them today but if you can come over and give me a briefing I'd appreciate that.

Mr. McGrath moved to grant preliminary approval to the land exchange. Seconded by Mr. Morrison. Motion carried unanimously.

Director Sexton took a minute to recognize DNRC employee, Bob Storer. She said he has spent a lot of time working with the forest service bringing this to a reality. I just want to recognize his efforts.

105-7 RIGHTS-OF-WAY APPLICATIONS

Ms. Holmgren said in the right-of-way applications before you the largest percentage are historic rights-of-ways to Fergus County Electric cleaning up trespass easements that are out there, there is a historic right-of-way statute that provides for those cities, counties, and utility companies to come before the Board and receive a historic right-of-way. We do not have to have a survey. There are some benefits to coming under the historic right-of-way statute the survey requirement is waived and also MEPA and lessee completion is also waived. On a monthly basis you'll have significant number of historic rights-of-ways. In addition to the historic rights-of-ways, Big Horn County is receiving a right-of-way for us to place an emergency response center and community service building, that is in association with a Department of Transportation easement that has already been issued and those aspects have been worked out for the coordination on the placement of that particular building. We also have a reciprocal access agreement, Dern Draw, in northwest Montana. There are several private landowners that actually utilize this road to reach their properties, this particular easement and the concept for this easement has been out there for many years. Those landowners have created a

homeowners association and have purchased or are proposing to purchase, an easement across Plum Creek lands to do a reciprocal access agreement with us. The road users did not have properties that would not benefit the state, so therefore, they did not own property by which we could do an easement exchange so we worked out a situation. As usual, we try to acquire public access in all situations. In this one, we were not successful in doing that with Plum Creek. The road associated with this easement will have to be brought up to year-round standards, it is not of a standard that can be used right now, so that is also a requirement of this easement.

This month the applications are #12413 from John Mink Family Partnership for a private access road; #12216 through 12219, 12221 through 12225, 12227 through 12230 are from Sun River Electric Cooperative for overhead electric distribution lines; #12683 through 12714 are from Fergus Electric Cooperative for overhead electric distribution lines; #12829 is from Big Horn County for an emergency response center and community service building; #13095 is from the Montana Department of Transportation for highway bridge construction and maintenance; and #12790 is from Dern Draw Road Users Association for a perpetual non-exclusive easement.

Governor Schweitzer asked are we moving this as a final action or is this preliminary approval?

Ms. Sexton said final action as a package.

Governor Schweitzer said I am a member of Fergus Electric.

Mr. Morrison said it is not a controversial issue.

Mr. McGrath said you've disclosed so there is not a problem.

Motion was made by Mr. Morrison to approve the package of rights-of-way applications. Seconded by Mr. McGrath. Motion carried unanimously.

105-8 DISCUSSION OF ORIENTATION FOR BOARD MEMBERS

Director Sexton said we did discuss at the Wednesday staffer's meeting if they wanted some orientation because we do have three new Land Board staffers and two new Land Board members and they were interested. We have a power point generally about trust lands and issues that do come before the Board and the staff was interested in that. So we will arrange that for staffer's I don't know if the Board members are interested in a short power point orientation at the next meeting or as a separate activity.

Governor Schweitzer said may I suggest we contact Brad and see how he wants to proceed because he is the other new one here.

Ms. Sexton said I'll ask him and get back to you.

105-9 PUBLIC COMMENT

Roger Bergmeier, President of MonTRUST, said we are a 501C3 organization organized to protect the interests of the beneficiaries of the trust. With me here today is Roy Andes, our vice

president and legal counsel. We approach the trust from the standpoint that we like to educate the public about what the trust is for, we support the budget and programs of the department in carrying out their responsibilities, and we also testify at Land Board meetings, in legislative sessions and at hearings dealing with trust issues. One of the more effective things we do is represent the beneficiaries in courts. In fact, in a couple of weeks we will be hearing oral arguments in the Supreme Court on commingling trust revenues with general fund revenues. In the ten years we've been involved in this program, attending Land Board meetings, and testifying at the legislature the one thing we did recognize is that it seems there is always representatives from the users of the trust lands, ranchers, farmers, timber interests, and mining, and yet the beneficiaries of the trust, the educational world are not. It has been a frustration for us over that period of time wondering why can't we get these people interested in the management of trust lands. If Ms. McCulloch were here she'd say, and we agree with her, if we increase the income from trust land management it does not necessarily translate to an increase in education funding because of the way education is funded in the State of Montana. In the last session there was a bill introduced to put a floor on trust revenues so that increases and additional revenues from the trust would actually mean an increase in revenues for education. As an example, in the State of Utah, they had such a bill passed and that did occur and immediately all the school teachers in the State of Utah became advocates for the management of trust lands. We understand from the standpoint that everybody on this Board is here voted into a political office and there may be political concerns that might offset some of these things, but we would hope that the new Land Board members and the rest of the department understand their responsibilities as trustees of this land. We've been successful simply because of three reasons: the Enabling Act says what these lands need to be used for; the constitution comes along and says the same thing; and then when you add trust law to that it is a pretty good formula for being successful in making sure the beneficiaries do receive what they are supposed to from these trust lands.

Ms. Sexton said before we adjourn, next month we'll be having a preliminary discussion, not for action, of the programmatic EIS for the real estate management and trust lands. This is a thick document that I know you've all read thoroughly. We will have introductory information on this and action will be taken in March.

Motion to adjourn was made by Mr. McGrath. Seconded by Mr. Morrison.